

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH
FIRE MANAGEMENT
ASSOCIATION**



January 1, 2008 through December 31, 2010

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH AND
NEWPORT BEACH FIRE MANAGEMENT ASSOCIATION**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into with reference to the following:

1. The Newport Beach Fire Management Association ("NBFMA"), a recognized employee organization, and the City of Newport Beach ("City"), a municipal corporation and charter city, have been meeting and conferring, in good faith, with respect to wages, hours, fringe benefits and other terms and conditions of employment.
2. NBFMA representatives and City representatives have reached a tentative agreement as to wages, hours and other terms and conditions of employment for the period from January 1, 2008 to December 31, 2010 and this tentative agreement has been embodied in this MOU.
3. The City acknowledges and appreciates the cooperation of NBFMA during the meet and confer process leading to the adoption of the 2005-2007 MOU and this 2008-2010 MOU.
4. This MOU, upon approval by NBFMA and the Newport Beach City Council, represents the total and complete understanding and agreement between the parties regarding all matters within the scope of representation.

SECTION 1. - GENERAL PROVISIONS

A. Recognition

In accordance with the provisions of the Charter of the City of Newport Beach, the Meyers Milias Brown Act of the State of California and the provisions of the Employer's/Employee Labor Relations Resolution No. 2001-50, the City acknowledges that NBFMA is the majority representative for the purpose of meeting and conferring regarding wages, hours and other terms and conditions of employment for all employees in those classifications specified in Exhibit "A" or as appropriately modified in accordance with the Employer/Employee Resolution. All other classifications and positions not specifically included within Exhibit "A" are excluded from representation by NBFMA.

B. Duration of Memorandum

1. Except as specifically provided otherwise, any ordinance, resolution or action of the City Council necessary to implement this MOU shall be considered effective as of January 1, 2008. This MOU shall remain in full force and effect until December 31, 2010, and the provisions of this MOU shall continue after the date of expiration of this MOU in the event the parties are meeting and conferring on a successor MOU.
2. The terms and conditions of this MOU shall prevail over any conflicting provisions of the Newport Beach City Charter, the ordinances, resolutions and policies of the City of Newport Beach, and federal and state statutes, rules and regulations which either specifically provide that agreements such as this prevail, confer rights which may be waived by any collective bargaining agreement, or are, pursuant to decisional or statutory law, superseded by the provisions of an agreement such as, or similar to, this MOU.

C. Scope

1. All present written rules and currently established practices and employee rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU, or in the case of the Department SOP's falling within the scope of representation, the City has given notice to the Association and, upon request, met and conferred on any proposed changes which fall within the scope of representation.

When the Department proposes to change any SOP departmental rule or regulation, it will provide a copy of such change to NBFMA no less than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact.

2. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50 .

D. Bulletin Boards

1. Space shall be provided on bulletin boards within the Fire Department at their present location for the posting of notices and bulletins relating to NBFMA business, meetings, or events. All materials posted on bulletins

boards shall indicate the name of the organization responsible. Material posted shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of race, gender, ethnicity, religion or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material.

2. Material posted and messages sent through electronic mail (E-Mail) shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of race, gender, ethnicity, religion or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material. E-Mail may be used for Association business on a limited basis and consistent with Department Policy.

E. Conclusiveness

This MOU contains all of the covenants, stipulations, and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled to meet and confer concerning any issue within the scope of representation except as expressly provided herein or by mutual agreement of the parties. No representative of either party has the authority to make, and none of the parties shall be bound by, any statement, representation or agreement reached prior to the execution of this MOU and not set forth herein.

F. Modifications

Any agreement, alteration, understanding, variation, or waiver or modification of any of the terms or provisions of this MOU shall not be binding upon the parties unless contained in a written document executed by authorized representatives of the parties.

G. Savings

Should any part of this MOU be rendered or declared illegal or invalid by legislation, decree of court of competent jurisdiction or other established governmental administrative tribunal, such invalidation shall not affect the remaining portions of this MOU provided, however, should the provisions of this MOU relating to salary increases, fringe benefits, or the compensation policy be declared invalid the City shall provide alternative forms of compensation such that NBFMA members suffer no financial detriment by virtue of the decision or ruling with the manner and form of the compensation to be determined by the parties after meeting and conferring in good faith.

H. Impasse

In the event of an impasse (the failure to agree on a new MOU after the express term of the existing MOU has expired), the parties may agree on mediation pursuant to the procedure outlined in Section 16 of Resolution No. 2001-50 or a successor resolution.

I. Definitions

For the purposes of this MOU these terms shall have the following meanings:

1. The term "member" or "NBFMA member" shall mean all persons within classifications represented by NBFMA.
2. The term "staff employee" shall mean any NBFMA member who is assigned to work a 40 hour workweek.
3. The term "line employee" shall mean any NBFMA member assigned to work an average 56 hour workweek in 24 hour shift increments.
4. The term "Municipal Fire Departments in Orange County" or "Municipal Fire Departments" shall mean all City operated Fire Departments and the Orange County Fire Authority.

SECTION 2. - COMPENSATION

A. Salary

1. Guaranteed Salary

The salary for the position of Fire Battalion Chief shall maintain at least a 9% salary differential between the top step of Fire Captain and the bottom step of the Fire Battalion Chief. Adjustments to the salary of Battalion Chief shall be reflected in corresponding adjustments to other positions represented by NBFMA necessary to maintain the salary differentials listed below.

<u>Classification</u>	<u>Percent of Battalion Chief Top Step</u>
Fire Line Battalion Chief	N/A
Fire Division Chief	112.5%
Fire Deputy Chief	118%
Fire Marshal	112.5%

2. Salary Adjustments

- a. Effective December 22, 2007, the City shall increase base salary for the Battalion Chief classification by two percent (2%) (with increases for other classifications pursuant to the matrix below).
- b. Effective June 21, 2008, the City shall increase base salary for the Battalion Chief classification by two percent (2%) (with increases for other classifications pursuant to the matrix above).
- c. Effective December 20, 2008, the City shall increase base salary for the Battalion Chief classification by three and one-quarter percent (3.25%) (with increases for other classifications pursuant to the matrix above).
- d. Effective December 19, 2009, the City shall increase base salary for the Battalion Chief classification by three and one-half percent (3.5%) (with increases for other classifications pursuant to the matrix above).

B. Overtime - Hours Worked

1. Except as provided in Section B(2), all approved paid overtime shall be paid at the straight time rate. The City and Association agree that all unit classifications are properly exempted from the provisions of the Fair Labor Standards Act. Overtime payments were decreased from time and one-half to straight time by agreement of the parties as part of a negotiation which increased the percentage spread between Battalion Chief and Fire Captain. The overtime rate shall be taken into account when comparing total compensation to benchmark positions in other agencies.
2. Strike Team Actions. In the event that a Unit employee is assigned to provide fire suppression services as part of a regional, state, or federal strike team organized by State or Federal officials and when all of the below Conditions exist, that Unit employee shall be paid at the time and one-half (T½) 56-hour rate. The Conditions are:
 - The Unit employee is working overtime hours;
 - The Strike Team is operating outside of the city limits;
 - The Unit employee is on duty on the Strike Team for more than eight (8) hours;
 - A disaster declaration has been approved by the State or Federal government for the fire suppression action; and

- The costs for these overtime hours are specifically authorized for reimbursement by the state or federal government.
3. Compensatory Time. In lieu of overtime members may elect to accrue compensatory time off. Staff personnel may accrue a maximum of 200 hours. Line personnel may accrue a maximum of 144 hours. Personnel must use all accrued compensatory time by time of retirement.

C. Required Uniform

City shall pay the entire cost of providing NBFMA member with each component of the required NBFMA uniform. The required NBFMA uniform includes safety shoes, badges and insignias, uniform pants, uniform shirts, uniform jackets and liner, belts, sweatshirt, base camp hat, and turnout safety clothing. City shall not be responsible for providing employee with socks, underwear, cap or workout shoes, or other clothing.

The City will report the value of the required uniform at \$1,719.00 to PERS.

The City will provide an adequate number of reserve turnouts at each station to allow for proper turnout cleaning/decontamination. This equipment will be used to temporarily replace an employee's personal turnout equipment that cannot be placed in service because they are wet, contaminated, or aged.

D. Scholastic/Certificate Achievement Pay

NBFMA members are entitled to additional compensation contingent upon scholastic/certificate achievement ("Scholastic/Certificate Achievement Pay"). NBFMA members may apply for increases pursuant to this Section when eligible and scholastic/certificate achievement pay shall be included in the member's paycheck for the pay period immediately after approval by the Fire Chief. It is the responsibility of the NBFMA member to apply for Scholastic/Certificate Achievement Pay. Approval of the member's application shall not be unreasonably withheld or delayed, and the member shall not be entitled to receive scholastic/certificate achievement pay prior to the date the application is approved even though the member may have been eligible prior to approval. Scholastic/Certificate achievement pay is contingent upon years of service and number of units and/or degrees received by the employee.

Qualifying units and/or degrees must be awarded by accredited community colleges, state colleges or universities. NBFMA member shall receive scholastic achievement pay in accordance with the following:

1. Scholastic Achievement Pay

<u>Years of Service:</u>	<u>College Semester/Unit:</u>	<u>% of actual step in job class range</u>
2 or more	30	1.5%
3 or more	60	2.5%
5 or more	90	3.5%
5 or more	120	4.5%
5 or more	B.A./B.S.	5.5%

2. Certificate Pay

<u>Coursework</u>	<u>Monthly Compensation</u>
Completion of coursework for Certified Chief Fire Officer	Effective June 2, 2008 increase to 3.0% month of actual step in job class range

E. Bilingual Pay

Employees certified as bilingual (Spanish) shall be eligible to receive One Hundred Fifty (\$150.00) Dollars per month in bilingual pay. The certification process will confirm that employees are fluent at the street conversational level in speaking, reading and writing Spanish. Employees certified shall receive bilingual pay the first full pay period following certification.

Additional languages may be certified for compensation pursuant to this section by the Fire Chief.

F. Court Standby Pay

NBFMA members who, pursuant to Subpoena compelling attendance to testify to acts, observations, or omissions occurring in the course and scope of employment or at the direction of their supervisor, are required, while off-duty, to remain within a certain response time from court, shall be considered to be on "court standby time" and shall receive four hours of pay for each eight hours of court standby time. NBFMA members shall, when required to appear in court pursuant to a Subpoena or the direction of their supervisor to testify at matters relating to their employment with the City, be considered to be on duty and shall be paid accordingly. Members shall remit all witness fees received for testifying or appearing on any matter for which the member is eligible to receive court standby time.

SECTION 3. - LEAVES

A. Flex Leave

1. Effective December 22, 2007, NBFMA members shall accrue flex leave as follows. It is mutually understood that accrual rates have been modified to provide for the longevity increase set forth below:

<u>Years of Con't. Svc</u>	<u>Accrual Hours/Pay Period</u>	<u>Accrual Hours/Pay Period</u>	<u>Longevity Pay Increase</u>
	Line Employees	Staff Employees	
Less than 5	9.77	6.97	0.00%
5 but less than 9	10.69	7.63	0.00%
9 but less than 12	11.62	8.33	0.00%
12 but less than 16	12.54	8.95	0.00%
16 but less than 20	12.54	8.95	1.5%
20 but less than 25	12.54	8.95	2.5%
25 and over	12.54	8.95	3.5%

2. The Flex leave program shall be administered as follows:

- a. NBFMA members shall not accrue flex leave until continuously employed by the Newport Beach Fire Department for a period of six (6) months provided, however, if a member on the flex leave program becomes sick during the first six months of employment, the City will advance up to six (6) months of accrual for line employees for use by the member to recover from illness.

In the event the City advances paid leave time and the employee is terminated or resigns before completing six months of continuous employment, the member's final check shall be reduced by an amount equal to the number of flex leave hours advanced multiplied by the member's hourly rate of pay.

- b. NBFMA members who are staff employees shall accrue six (6) months of flex leave and line employees shall accrue six (6) months of flex leave immediately upon completion of six (6) months continuous employment with the Newport Beach Fire Department, provided however, this amount shall be reduced by any flex leave time advanced during the first six months of employment.
- c. Members employed by the City prior to initiation of the flex leave program have had the current accrued vacation time converted to

flex leave on an hour for hour basis with the current sick leave placed in a bank to be used as provided in the Employee Policy Manual. Members entitled to use sick leave pursuant to the Employee Policy Manual and who are absent due to illness shall have their sick leave bank reduced by the duration of the absence unless the member notifies appropriate department personnel that the absence should be charged to the member's flex leave account.

- d. Subject to the provisions of Section 2(I), prior to the effective date of this MOU, members were entitled to accrue flex leave up to a maximum of 78 times the member's bi-weekly accrual rate. Earned flex leave in excess of the maximum permitted is currently paid bi-weekly at the member's hourly rate of pay. NBFMA members may, at any time, elect to receive pay (at the member's normal hourly rate) for all accrued flex leave in excess of 72 hours for a line employees and 40 hours for staff employees. However, NBFMA members may not elect to buy down accrued Flex Leave below the current threshold for payment (78 times the member's bi-weekly accrual rate) unless, during the twelve months preceding the election, the member has taken at least ninety-six (96) hours of paid leave if a line employee and eighty (80) hours of paid leave if a staff employee.
- e. All requests for scheduled flex leave shall be submitted to appropriate department personnel. In no event shall a member take or request flex leave in excess of the amount accrued.
- f. Members shall be paid for all accrued flex leave at their then current hourly rate of pay upon termination of the employment relationship.

B. Telestaff Selection System

The City has implemented Telestaff which phased out the Vacation Selection System (VSS). The City commits to maintain Telestaff subject to budgetary constraints outlined in this Section. The City shall, for each fiscal year during the term of this MOU, adopt a budget which provides for the payment of overtime specifically for the purpose of implementing Telestaff. The amount to be budgeted shall be calculated by computing the Vacation/Flex leave time (leave) normally accrued by each member during a fiscal year (total annual leave) multiplying total annual leave, by that member's overtime rate of pay (value of leave) and then adding the value of leave for each NBFMA member. Each member's overtime rate of pay shall be calculated on the basis of the member's highest anticipated rate of pay during the upcoming fiscal year. The total "value

of leave" for all members shall be identified in the budget as the "LEAVE COVERAGE FUND."

C. Vacation/Sick Leave

Administration of the vacation and sick leave program for members who have not converted to flex leave shall be in accordance with the provisions of the Employee Personnel Manual of the City of Newport Beach. Line employees shall accrue sick leave at the rate of twelve hours per month and staff employees shall accrue sick leave at the rate of eight hours per month.

D. Holiday Time

1. Accrual

The provisions of this subsection shall apply to all NBFMA members on a pro-rata basis. NBFMA members who are line employees shall accrue holiday time at the rate of 5.54 hours per pay period. NBFMA who are staff employees shall accrue holiday time at the rate of 3.96 hours per pay period.

All employees including Staff Employees shall receive their holiday time in pay (PERSable). Holiday pay shall be paid bi-weekly with the regular check.

2. Staff Employees

Staff Employees may be required to take specified City holidays off, in the sole discretion of the Fire Chief. Time will be charged against the employee's flex (or vacation) leave bank.

E. Bereavement Leave

Bereavement leave shall be defined as "the necessary absence from duty by an employee having a regular or probationary appointment because of a death or terminal illness in his/her immediate family." Staff employees shall be entitled to five (5) working days of Bereavement Leave per event while Line Employees shall be entitled to ninety (90) hours of Bereavement Leave per event. Bereavement leave shall be administered in accordance with the provisions of the Employee Policy Manual. For the purpose of this section immediate family shall mean an employee's father, mother, brother, sister, wife, husband, child, or grandparent, and the employee's spouse's mother, father, brother, sister, child or grandparent. The provisions of this Section shall not diminish or reduce any rights a member may have pursuant to applicable provisions of State or Federal law.

F. Jury Duty

NBFMA members who are assigned to line positions and are called to jury duty shall be excused for each 24 hour shift during which the member is required to attend court and sit on a jury or await assignment.

G. Family Sick Leave

Unit employees shall be entitled to use one-half (1/2) of their annual sick leave accrual for an illness of a dependent which requires the presence of the employee. Leave shall be administered in accordance with the provisions of the Employee Policy Manual. The provisions of this Section shall not be construed to affect or reduce the right of any employee to any unpaid family medical leave authorized by State or Federal law.

H. Flex Leave Premium Pay Account

On request NBFMA members shall have the right to receive pay, at the rate of 109% of their then current base salary, for any Flex Leave banked, up to a maximum of 78 times their bi-weekly Flex Leave accrual rate as of June 30, 1994 (Flex Leave Premium Pay Account). The Flex Leave Premium Pay Account balance shall be shown on each member's regular pay stub. The Flex Leave Premium Pay Account shall be reduced in accordance with member purchases. Each member shall, upon termination, resignation, retirement or other separation from service, receive terminal pay at the rate of 109% of their then current base salary for all accrued Flex Leave to the full extent of the remaining balance in the Flex Leave Premium Pay Account with any remaining Flex Leave paid at the then current base salary. The provisions of this section shall apply only to members employed by the City of Newport Beach on or before June 30, 1994.

I. Sick Leave Pay Out

Upon paid retirement, termination in good standing or death, but not termination for cause or resignation in lieu of termination, any member or his/her estate shall be paid, at the rate of 109% of their final base salary for a percentage of the employees accrued but unused Sick Leave computed as follows:

YEARS OF SERVICE:

PERCENT OF UNUSED
SICK LEAVE:

LESS THAN 10
10 BUT LESS THAN 15

NONE
25%

15 BUT LESS THAN 20
20 OR MORE

37.5%
50%

Payment for accrued but unused Sick Leave shall be limited to the first 800 hours of accrued Sick Leave or Staff Employees and the first 1200 hours for Line employees (for example if a Line Employee had accumulated 1400 hours of Sick Leave and retired after 16 years he or she would receive Terminal Sick Leave Pay in a sum equal to 109% of their base salary per hour for 450 hours of Sick Leave - 1200 hours multiplied by .375).

J. Vacation Leave Premium Pay Account

Members who are on the traditional Vacation/Sick Leave program as of June 30, 1994 shall be entitled to receive pay, at the rate of 109% of their then current base salary, for any accumulated Vacation Leave up to a maximum of 52 times their bi-weekly Vacation Leave accrual rate as of June 30, 1994 (Vacation Leave Premium Pay Account). The Vacation Leave Premium Pay Account balance shall be shown on each members regular pay stub. The Vacation Premium Pay Account balance shall be reduced commensurate with member purchases. Each member shall, upon termination, resignation, retirement or other separation from service, receive terminal pay at the rate of 109% of their then current base salary for all accrued Vacation Leave to the full extent of the remaining balance in the Vacation Leave Premium Pay Account with any remaining Vacation Leave paid upon termination at the then current base salary. The provisions of this section shall apply only to members employed by the City of Newport Beach on or before June 30, 1994.

K. Worker's Compensation Leave

Any Safety NBFMA employee who has been incapacitated by reason of any injury or illness which has been determined to have arisen out of or in the course of his or her employment shall receive compensation in accordance with the provisions of Section 4850 et. seq. of the Labor Code of the State of California.

L. Reassignment

In the event a line employee is reassigned to a staff position, or a staff employee is reassigned to a line position, the City shall automatically convert the Flex Leave, Vacation Leave, Sick Leave, Bereavement Leave and other benefits from the position previously held to the newly assigned position provided. The ratio for conversion of staff employee benefits to line employee benefit shall be 7/5 and the ratio for converting line employee benefits to staff employee benefits shall be 5/7.

K. Release Time

The Association will have an account of thirty-six (36) hours per year to be used for the purposes of educational development of the unit members in employer-employee relations. The Association shall submit a request to use the release time to the Fire Chief, and the Fire Chief may grant the request based on current operational needs.

SECTION 4. - FRINGE BENEFITS

A. Medical Insurance

1. Benefits Information Committee

City has established a Benefits Information Committee (BIC) composed of one representative from each employee association group and up to three City representatives. The Benefits Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate coverage levels and other health programs. The purpose of the BIC is to provide each employee group with information about health insurance/programs and to receive timely input from associations regarding preferred coverage options and levels of coverage.

2. City Contribution

The City has implemented an IRS qualified Cafeteria Plan. The City contribution toward the Cafeteria Plan shall be as set forth below. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurance/programs. The City and the Newport Beach Fire Management Association will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules and during regular open enrollment periods.

Effective December 22, 2007 the City's contribution towards the Cafeteria Plan will increase to \$874 (plus the minimum CalPERS participating employer's contribution).

Effective December 22, 2008 the City's contribution towards the Cafeteria Plan will increase to \$974 (plus the minimum CalPERS participating employer's contribution).

Effective December 19, 2009 the City's contribution towards the Cafeteria Plan will increase to \$1,049 (plus the minimum CalPERS participating employer's contribution).

Effective upon the ratification of this agreement, NBFMA members who do not want to enroll in any health care plan offered by the City must provide evidence of health care insurance coverage, and execute an opt out agreement releasing the City from any responsibility or liability to provide health care insurance coverage on an annual basis.

3. Dental Insurance

The existing or comparable dental plans shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

4. Vision Insurance

The existing or a comparable vision plan shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

B. Additional Health Insurance/Programs

1. IRS Section 125 Flexible Spending Account

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income for payment of allowable expenses such as child care and medical expenses. The City shall maintain a "reimbursable account program" in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which an Association member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee's account. The base salary of the employee will be reduced by the amount designated by the employee for reimbursable expenses.

2. Disability Insurance

The City shall provide Short-term (STD) and Long-term (LTD) disability insurance to all regular full time employees with the following provisions:

Weekly Benefit	66.67% gross weekly wages
Maximum Benefit	\$10,000/month
Minimum Benefit	\$50
Waiting Period	30 Calendar Days

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Concurrent with the commencement of this program, employees assumed responsibility for the payment of the disability insurance cost in the amount of one (1.0%) percent of base salary. Simultaneously, the City increased base wages by one (1.0%) percent.

3. Life Insurance

The City shall provide life insurance for all regular full-time employees in \$1,000 increments equal to one times the employee's annual salary up to a maximum of \$50,000. At age 70 the City-paid life insurance is reduced by 50% of the pre-70 amount. This amount remains in effect until the employee retires from City employment.

4. Employee Assistance Program

City shall provide an Employee Assistance Program (EAP) through a properly licensed provider. Association members and their family members may access the EAP subject to provider guidelines.

C. Retirement Benefits

1. Pursuant to Section 20691 of the California Government Code, the City shall pay to PERS, on behalf of all employees covered by this agreement, the entire required normal "safety member" retirement contribution, but not to exceed 9% of the compensation earnable which PERS uses to calculate retirement contributions and benefits. In addition, the amount of this payment shall be reported to PERS as special compensation, which is part of the employee's compensation earnable, pursuant to the provisions of Section 20636(c)(4) of the California Government Code, as amended

effective July 1, 1994. This payment shall be credited to the employee's accounts maintained by PERS in accordance with Section 20691 of the California Government Code. NBFMA acknowledges that the City is making this payment pursuant to a specific request of NBFMA to do so.

2. The City's contract with PERS shall also provide for:
 - a. A 3% @ 50 retirement formula pursuant to the provisions of Section 21252.01 of the California Government Code.
 - b. The military buy-back provisions pursuant to Section 20930.3 of the California Government Code and the highest year benefit pursuant to Section 20042.
 - c. The Level 4 1959 Survivors Benefit.
 - d. The City has amended its PERS contract to provide the pre-retirement option settlement 2 death benefit (Section 21548) to be effective July 23, 2005.

D. Retiree Medical Benefit

1. Background

In 2005, the City and all Employee Associations agreed to replace the previous "defined benefit" retiree medical program with a new "defined contribution" program. The process of fully converting to the new program will be ongoing for an extended period. During the transition, employees and (then) existing retirees have been administratively classified into one of four categories. The benefit is structured differently for each of the categories. The categories are as follows:

- a. Category 1 - Employees newly hired after January 1, 2005.
- b. Category 2 - Active employees hired prior to January 1, 2006, whose age plus years of service as of January 1, 2005 was less than 50 (46 for public safety employees).
- c. Category 3 - Active employees hired prior to January 1, 2006, whose age plus years of service was 50 or greater (46 for public safety employees) as of January 1, 2005.
- d. Category 4 - Employees who had already retired from the City prior to January 1, 2006, and were participating in the previous retiree medical program.

2. Program Structure

This is an Integral Part Trust (IPT) Medical Expense Reimbursement Program Plan (MERP).

a. For employees in Category 1, the program is structured as follows:

Each employee will have an individual MERP account for bookkeeping purposes, called his or her "Employee Account." This account will accumulate contributions to be used for health care expense after separation. All contributions to the plan are either mandatory employee contributions or City paid employer contributions, so they are not taxable to employees at the time of deposit. Earnings from investment of funds in the account are not taxable when posted to the account. Benefit payments are not taxable when withdrawn, because the plan requires that all distributions be spent for specified health care purposes.

Contributions will be in three parts.

Part A contributions (mandatory employee contributions): 1% of Salary.

Part B contributions (employer contributions): \$2.50 per month for each year of service plus year of age (updated every January 1st based on status as of December 31st of the prior year).

Part C contributions (leave settlement as determined by Association):

The Association will determine the level of contribution for all employees it represents, subject to the following constraints. All employees within the Association must participate at the same level, except that Safety members and Non-safety members within an Association may have different levels. The participation level should be specified as a percentage of the leave balance on hand in each employee's leave bank at the time of separation from the City.

For example, if the Association wishes to specify 50% of the leave balance as the participation level, then each member leaving the City, or cashing out leave at any other time, would have the cash equivalent of 50% of the amount that is cashed out added to the MERP, on a pre-tax basis. The remaining 50% would be paid in cash as taxable income. Individual employees would not have the option to deviate from this breakout.

The Association has decided to participate in Part C contributions at the level of 100% Flex, 0% Sick, and 0% comp time. This amount may be changed, on a go forward basis, as part of a future meet and confer process. However, the participation level must be the same for all employees within the Association except that Safety members and Non-safety members within an Association may have different levels. Additionally, the purpose and focus of these changes should be toward long-term, trend type adjustments. Due to IRS restrictions regarding "constructive receipt," the City will impose restrictions against frequent spikes or drops that appear to be tailored toward satisfying the desires of a group of imminent retirees.

Spillover pay is not eligible for Part C contributions.

Nothing in this section restricts taking leave for time off purposes.

Sick leave balances may also be included in the MERP Part C contributions, but only to the extent and within all the numeric parameters specified in the Employee Policy Manual. Section 11.21 of the Manual contains a schedule, which specifies the amount of sick leave that can be "cashed out," based on time of service. The manual also caps the number of hours that can be "cashed out" at 800, and specifies that sick leave hours are "cashed out" on a 2 for 1 basis (800 hours of sick leave are converted to 400 hours for cash purposes). Sick leave participation is a separate item from vacation/flex leave participation, and thresholds must be separately identified by the Association.

Part A contributions may be included in PERS compensation. Part B and Part C contributions will not be included in PERS compensation.

Part A contributions begin upon enrollment in the program and are credited to each MERP Employee Account each pay period. Eligibility for Part B contributions is set at five years of vested City employment. At that time, the City will credit the first five years worth of Part B contributions into the Employee Account (interest does not accrue during that period). Thereafter, contributions are made bi-weekly. Part C deposits, if any, will be made at the time of employment separation.

Each Employee has a right to reimbursement of medical expenses (as defined below) from the Plan until the Employee Account balance is zero. This right is triggered upon separation. If an employee leaves the City prior to five years employment, only the Part A contributions and Part C leave settlement contributions, if any, will be in the MERP Employee Account. Such an employee will not be entitled to any Part B contributions. The

exception to this is a full-time employee, participating in the program, who leaves the City due to industrial disability during the first five years of employment. In such cases, the employee will receive exactly five years worth of Part B contributions, using the employee's age and compensation at the time of separation for calculation purposes. This amount will be deposited into the employee's MERP account at the time of separation.

Distributions from MERP Employee Accounts are restricted to use for health insurance and medical care expenses after separation, as defined by the Internal Revenue Code Section 213(d) (as explained in IRS Publication 502), and specified in the Plan Document. In accordance with current IRS regulations and practices, this generally includes premiums for medical insurance, dental insurance, vision insurance, supplemental medical insurance, long term care insurance, and miscellaneous medical expenses not covered by insurance for the employee and his or her spouse and legal dependents – again only as permitted by IRS Publication 502. Qualification for dependency status will be determined by guidelines in IRC 152. If used for these purposes, distributions from the MERP accounts will not be taxable. Cash withdrawal for any other purpose is prohibited. Under recent IRS Revenue Ruling 2005-24, any balance remaining in the Employee Account after the death of the employee and his or her spouse and/or other authorized dependents (if any) must be forfeited. That particular MERP Employee Account will be closed, and any remaining funds will become general assets of the plan.

The parties agree that the City's Part B contributions during active employment constitute the minimum CalPERS participating employer's contribution towards medical insurance after retirement. The parties also agree that, for retirees selecting a CalPERS medical plan, or any other plan with a similar employer contribution requirement, the required City contribution will be withdrawn from the retiree's MERP account.

b. For employees in Category 2, the program is the same as for those in Category 1, with the following exception:

In addition to the new plan contributions listed above, current employees who fully convert to the new plan will also receive a one-time City contribution to their individual MERP accounts that equates to \$100 per month for every month they contributed to the previous "defined benefit" plan, to a maximum of 15 years (180 months). This contribution will be made only if the employee retires from the City and at the time of retirement. No interest will be earned in the interim.

Employees in Category 2 who had less than five years service with the City prior to implementation of the new program will only receive Part B contributions back to January 1, 2006 when they reach five years total service.

c. For employees in Category 3, the program is the same as for those in Category 2, with the following exception:

For employees in this category, the City will make no Part B contributions while the employees are still in the active work force. Instead, the City will contribute \$400 per month into each of their MERP accounts after they retire from the City, to continue as long as the employee or spouse is still living.

Each employee will contribute a flat \$100 per month to the plan for the duration of their employment to partially offset part of this expense to the City. The maximum benefit provided by the City after retirement is \$4,800.00 per year, accruing at the rate of \$400.00 per month. There is no cash out option for these funds, and they may not be spent in advance of receipt.

Employees in this category will also receive an additional one-time City contribution of \$75 per month for every month they contributed to the previous plan prior to January 1, 2006, up to a maximum of 15 years (180 months). This contribution will be made to the MERP account at the time of retirement, and only if the employee retires from the City. No interest will be earned in the interim.

d. For employees (retirees) in Category 4, the structure is very similar to the previous retiree medical program, except that there is no cost share requirement, and the \$400 City contribution after retirement can be used for any IRS authorized purpose, not just City insurance premiums.

Effective July 1, 2006, a MERP account has been opened for each retiree in this category, and the City will contribute \$400 per month to each account as long as the retiree or spouse remains living.

3. Administration

Vendors have been selected by the City to administer the program. The contract expense for program-wide administration by the vendor will be paid by the City. However, specific vendor charges for individual account transactions that vary according to the investment actions taken by each employee, such as fees or commissions for trades, will be paid by each employee.

The City's Deferred Compensation Committee, or its successor committee, will have the authority to determine investment options that will be available through the plan.

4. Value of Benefit

For all purposes, including compensation comparisons, the Retiree Medical Program shall be valued at 1% of salary on which PERS retirement is based (Part A); plus .25% of other compensation (Part B).

E. Tuition Reimbursement

Maximum tuition reimbursement for NBFMA members shall be \$1,000 per fiscal year. Effective July 2008 maximum reimbursement shall increase to \$1,400, effective July 2010 maximum reimbursement shall increase to \$1,500.

1. College Courses

NBFMA members attending accredited community colleges, colleges, trade schools or universities may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, books, fees or other student expenses for approved job-related courses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade of "C" or better for undergraduate courses and a grade of "B" or better for graduate courses. All claims for tuition reimbursement require the approval of the Human Resources Director.

2. Non-College Courses

NBFMA members attending job-related classes, courses, and seminars given by recognized agencies, organizations or individuals other than accredited college institutions may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, parking fees, travel and lodging expenses.

Job-related courses and seminars will be considered pre-authorized in the following areas: management and supervision, oral and written communications, conflict resolution, fire ground operations, rescue systems, legal issues, media relations, risk management, EMS, health and safety, apparatus operator, auto extrication, fire prevention, arson investigation, and critical incident stress management.

Reimbursement is contingent upon the successful completion of the course. Successful completion means a document or certificate showing successful completion of the class or seminar. All claims for tuition reimbursement require the approval of the Fire Training Division Chief before submittal to Human Resources.

F. Annual Physical Examinations

All NBFMA members shall participate in the Department Fitness Program as outlined in Department SOP.

G. Physical Conditioning Equipment/Apparel

City shall provide workout apparel for each NBFMA member. Workout apparel shall consist of three workout shirts and two trunks. NBFMA members shall wear City provided workout apparel when working out on duty.

SECTION 5. - MISCELLANEOUS PROVISIONS

A. Reductions in Force/Layoffs

The provisions of this section shall apply when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions

- a. "Layoffs" or "Laid off" shall mean the non-disciplinary termination of employment.
- b. "Seniority" shall mean the time an employee has worked in a specific Classification within a Series calculated from the date on which the employee was first granted permanent status, subject to the following:
 - i. Credit shall be given only for continuous service subsequent to the most recent appointment to permanent status in the Classification or Series;

- ii. Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.
- iii. For purposes of determining layoffs within any Classification, seniority shall mean the time an employee has worked within any Series.
- c. "Classification" shall mean one full time position identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part-time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- d. "Series" shall mean two or more Classifications within a Department which require the performance of similar duties with the higher ranking Classification(s) characterized by the need for less supervision by superiors, more difficult assignments, more supervisory responsibilities for subordinates. The City Manager shall determine those Classifications which constitute a Series.
- e. "Bumping Rights", "Bumping" or "Bump" shall mean the right of an employee in a higher Classification who is subject to layoff to displace a less senior employee in a lower Classification within the Series. No employee shall have the right to Bump into a Classification for which the employee does not possess the minimum qualifications such as specialized education, training or experience, provided, however, the City shall allow an employee to become re-certified as an EMT or a paramedic in the event the employee's certification has expired due to promotion to another position. An employee has the right to "Bump" into only those positions the employee has previously held with the Department.

2. Procedures

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

- a. Temporary and probationary employees within any Classification shall, in that order, be laid off before permanent employees.
- b. Employees within a Classification shall be laid off in inverse order of seniority;

- c. An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series, provided, however, that the determination of the employee to be terminated from the position of Firefighter shall be based on seniority within the Series. An employee who has Bumping Rights shall notify the Department Director within seven (7) working days after notice of layoff of his/her intention to exercise Bumping Rights.
- d. In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice

Employees subject to lay-off shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days pay in lieu of notice. In addition, employees laid off will be paid for all accumulated paid leave, holiday leave (if any), and accumulated sick leave to the extent permitted by the Personnel Resolution.

4. Re-Employment

Permanent and probationary employees who are laid off shall be placed on a Department re-employment list in reverse order of layoff. Re-employment lists will be valid for two (2) years. The re-employment list shall remain in effect until exhausted by removal of all names on the list. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re-employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her past known address. Any employee shall have the right to refuse to be placed on the re-employment list or the right to remove his or her name from the re-employment list by sending written confirmation to the Human Resources Director.

5. Demotion

Permanent and probationary employees who are demoted because of reduced staffing levels shall be placed on a Department promotional list in reverse order of demotion. This promotional list shall remain in effect until exhausted by removal of all names on the list.

6. Severance Pay

Permanent employees who are laid off shall, as of the date of lay-off, receive one week severance pay for each year of continuous service with the City of Newport Beach.

B. Discipline Plan

Employees of this Association are exempt from disciplinary leave of less than five (5) days.

C. Fire Suppression Staffing Levels

Move-up and move-down coverage shall be used to staff the fire suppression battalion chief position in the absence of available battalion chiefs.

D. Staff Assignment Schedule

As a matter of past practice, staff employees have worked various schedules including 10/80, 8/80 and 9/80. Staff employees have, also as a matter of past practice, been required to attend meetings or training sessions on days off by switching their normal day off and have not received compensation. When the parties have agreed not to alter any rights that members may have as a result of any past practice, NBFMA members shall select, in writing, one of the preceding schedules of the schedule option selected. The staff member shall be entitled to work that schedule unless that work schedule would significantly interfere with the ability of the member to perform his/her required duties. All NBFMA members assigned to work a forty hour work week shall have the option to work any of the following schedules:

- Five eight hour days, Monday through Friday.
- Four ten hour days.
- Nine eighty work schedule.

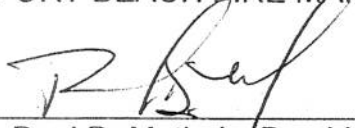
E. Dues Checkoff

NBFMA members shall have the right to authorize the City to deduct regular monthly NBFMA dues from their bi-weekly paycheck. The City shall deduct

payment of NBFMA dues when the employee has authorized such deduction and City shall remit all payments to NBFMA in accordance with the terms of each member's authorization.

Executed this 13th day of January, 2009

NEWPORT BEACH FIRE MANAGEMENT ASSOCIATION (NBFMA)

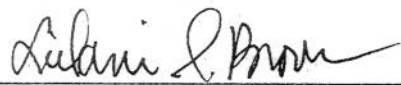
By: 
Paul D. Matheis, President, NBFMA

By: 
Dave K. Mais, Vice-President, NBFMA

CITY OF NEWPORT BEACH

By: 
Edward Selich, Mayor

ATTEST:

By: 
Leilani Brown, City Clerk



APPROVED AS TO FORM:

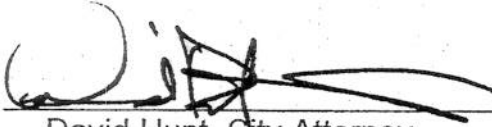
By: 
David Hunt, City Attorney

EXHIBIT A

FIRE MANAGEMENT ASSOCIATION REPRESENTED CLASSIFICATIONS

<u>Class Code</u>	<u>Classification</u>	<u>Compensation</u>
F315	Fire Line Battalion Chief	Section 2 (a) (i)
F305	Fire Division Chief	F315 + 12.5%
F310	Fire Deputy Chief	F315 + 18 %
F320	Fire Marshal	F315 + 12.5%